IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 15TH MARCH 2007 / 24TH PHALGUNA 1928

Crl.Rev.Pet.No. 992 of 1999()

CRA.91/1995 of SESSIONS COURT, KOTTAYAM
CC.163/1990 of CHIEF JUDICIAL MAGISTRATE COURT, KOTTAYAM

.....

REVN. PETITIONER:

K. U. BAIJU, MANAGER,
TODDY SHOP NO. 4,
KUMARAKOM, KOTTAYAM DISTRICT.

BY ADV. SRI.T.A.SHAJI

RESPONDENTS:

---

1. THE FOOD INSPECTOR,
   CHANGANACHERRY CIRCLE,
   CHANGANACHERRY.

2. STATE OF KERALA REPRESENTED BY
   THE PUBLIC PROSECUTOR,
   HIGH COURT OF KERALA,
   ERNAKULAM.

BY ADV. SRI. C.M. KAMMAPPU, PUBLIC PROSECUTOR

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 15/03/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL. M.P.NO. 4591/1999 IN CRL. R.P. NO. 992/1999

DISMISSED

15.03.2007 SD/- K.R. UDAYABHANU, JUDGE.

/True Copy/

P.A to Judge.

K.R. UDAYABHANU, J

==========

CRL. R.P. NO. 992 OF 1999

==========

Dated this the 15th day of March 2007

O R D E R

The revision petitioner stands convicted for the offence under section 7(1) r/w 16(1)(a)(1) of the Prevention of Food Adulteration Act, 1954 and Rule 50 (1) of the P.F.A Rules, 1954 and sentenced to undergo rigorous imprisonment for six months and to pay a fine of Rs.1,000/- and in default to undergo simple imprisonment for two months.

2. It is the prosecution case that the sample of vinegar taken from the toddy shop of A2 and of which A1 was the Manager, did not confirm to the standard prescribed. The evidence adduced in the matter consisted of the testimony of PWs 1 to 6 and Exts.1 to 16.

3. It is seen from Ext.P11 report of the public analyst that the sample did not confirm exactly with the standard prescribed in the PFA Rules i.e., A20, for brewed vinegar. As per the chemical analysis report, the total solid content has only 1.1 per cent whereas it should not have been less than 1.5 per cent.

4. The main contentions raised by the counsel for the revision petitioner are:

(i) that there is no evidence that the intermediary vessel in which the sample was collected was dry and clean.

(ii) there is no evidence that the sample was made homogeneous.

So far as the first contention is concerned, it is pointed out that the evidence of PW1 the Food Inspector, who collected the sample, did not contain any reference about the cleanliness of the intermediary vessel. It is seen that PW1 has stated that the vinegar purchased was divided into three clean and dry glass bottles. But, he has not mentioned that the pot in which he purchased sample was dry and clean. The counsel has relied on the decision of this Court reported in **Koyakutty v. Food Inspector (2000(3) KLT 693)** in support. As per Rule 14 of the PFA Rules the bottle, jar or other containant taken should be clean and dry. In the above case it has specified that in the absence of evidence to show that the intermediary vessel used for purchasing the sample was made clean and dry as required, conviction cannot be sustained in view of Rule 14 of the PFA Rules.

5. So also, there is no evidence from the part of PW1 that the sample purchased has been made homogeneous. This Court, in **Mohammed Kutty v. Food Inspector (1996(2) KLT 569** and **Babu v. Food Inspector (2000(3) KLT short note No. 12)** with respect to milk has held that the Food Inspector ought to have adopted some procedure to ensure that the sample is homogeneous and the particular portions are similar in nature so that the samples would get uniform consistency. It is pointed out that in the instant case, the vinegar is manufactured from the toddy. There will be concentration of solids on the bottom portion. But I find that in the absence of data with respect to the nature of the brewed vinegar I am not inclined to upheld the above contention. All the same, in view of the fact that there is total absence of evidence as to whether the intermediary vessel was dry and clean, I find that it cannot be held that the prosecution has proved beyond reasonable doubt that the accused is guilty of the offence alleged.

In the circumstances, the revision petition is allowed. The accused is acquitted.

K.R. UDAYABHANU, JUDGE.

RV